

# **EXHIBIT 2**

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1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 IN RE: MTBE LITIGATION

4  
4 00 MDL 1358 (SAS)

5 -----x

5 New York, N.Y.  
6 August 19, 2013  
6 4:40 p.m.

7 Before:

8 HON. SHIRA A. SCHEINDLIN,

9 District Judge

10 APPEARANCES

11 MILLER AXLINE & SAWYER

12 Attorneys for Plaintiffs NJ, PR, et al.

12 BY: MICHAEL AXLINE

13 -and-

13 BERGER & MONTAGUE

14 BY: TYLER E. WREN

15 GWEN FARLEY

15 YIN ZHOU

16 Attorneys for New Jersey Plaintiffs

17 McDERMOTT WILL & EMERY LLP

17 Attorneys for Defendant ExxonMobil, Defense Liaison

18 BY: JAMES A. PARDO

19 ARCHER & GREINER, P.C.

19 Attorneys for Defendants

20 BY: DAVID EDELSTEIN

21 KING & SPALDING LLP

21 Attorneys for Defendant Chevron

22 BY: CHARLES C. CORRELL, JR.

22 ROBERT MEADOWS

23 SEDGWICK LLP

24 Attorneys for Defendant Shell

24 BY: PETER C. CONDRON

25 RICHARD E. WALLACE, JR.

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1 that are in the possession of GPMI related to this site from  
2 1987. We were unable to find any supply records. The owner of  
3 the property does not have any supply records. So there is no  
4 affirmative --

5 THE COURT: Way to disprove it.

6 MS. DEAN: That's correct, your Honor.

7 THE COURT: That leaves his inference.

8 MS. DEAN: But, your Honor, he cannot meet the  
9 requirement of the preponderance of the evidence under the  
10 Supreme Court's holding in DeMonte with an inference that there  
11 was MTBE in the soil.

12 THE COURT: I know the one you mean.

13 MS. DEAN: Plaintiffs have to show with a  
14 preponderance of the evidence that there was a connection  
15 between a discharge, which in this case as to Getty the only  
16 evidence is that there was soil contamination. No groundwater  
17 contamination.

18 THE COURT: I got that. But the only inference is  
19 going to be the widespread use. That's about it.

20 Is that going to meet the preponderance of the  
21 evidence test, Mr. Axline?

22 MR. AXLINE: It is, your Honor. The DeMonte case was  
23 decided after taking of evidence and I am not sure that the  
24 preponderance of the evidence test is appropriate on a summary  
25 judgment motion.

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1 THE COURT: There is some evidence that can support a  
2 disputed issue of fact, I think you might be right on that.  
3 But for summary judgment purposes he doesn't have to meet the  
4 preponderance of the evidence test because then I would be  
5 weighing the evidence. That can't be the test on summary  
6 judgment. It has to be a record cite to something that will  
7 show that they will offer evidence at trial from which a  
8 reasonable juror could find. That's the way it reads. I  
9 wouldn't have to meet the preponderance of the evidence test.  
10 Then I would be weighing.

11 MS. DEAN: I understand, your Honor. But the bottom  
12 line is, plaintiffs don't even have an expert opinion to  
13 connect MTBE that was found in 2006, 19 years after my client  
14 pulled the USTs.

15 THE COURT: He agrees with that.

16 MS. DEAN: And the MTBE was located in a new tank  
17 field.

18 THE COURT: Which he says is right on top of the old  
19 tank field. He says it's right on top of the old tank field.

20 MS. DEAN: In our motion, your Honor, we would present  
21 evidence showing that that is not true.

22 THE COURT: Then it will be a disputed issue of fact  
23 and I can't decide it. I'm trying to make a point as to when  
24 these motions should be made and shouldn't be made. If that's  
25 disputed and if he relies on proof that virtually all the

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